

Docket No.: 66703-0015  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent Application of:  
Lester K. Chu et al.

Application No.: 10/801,156

Confirmation No.: 2193

Filed: March 13, 2004

Art Unit: 3625

For: INFORMATION DISTRIBUTION SYSTEM  
AND METHOD THAT PROVIDES FOR  
ENHANCED DISPLAY FORMATS

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Examiner: N. D. Rosen

**APPEAL BRIEF**

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This appeal is from the decision of the Primary Examiner dated October 22, 2007 ("Final Office Action"), finally rejecting claims 1-36, 38-47, and 49-51, which are reproduced as an Appendix to this brief. The Notice of Appeal was filed on December 18, 2007. This application was filed on March 15, 2004.

The fees required under § 41.20(b)(2) are addressed in the accompanying  
TRANSMITTAL OF APPEAL BRIEF.

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**I. REAL PARTY IN INTEREST**

The real party in interest is Idearc Media Corp., Assignee, a corporation organized and existing under the laws of the state of Delaware, and having a place of business at 2200 W. Airfield Dr., P.O. Box 619810, DFW Airport, Texas, 75261-9810.

## **II. RELATED APPEALS AND INTERFERENCES**

On August 7, 2007, an Appeal Brief was filed in serial no. 10/800,444, filed March 15, 2004, and entitled “INFORMATION DISTRIBUTION SYSTEM AND METHOD THAT ORGANIZES LISTINGS USING TIERS.”

On February 8, 2008, an Appeal Brief was filed in serial no. 10/948,425, filed September 23, 2004, and entitled “BUSINESS RATING PLACEMENT HEURISTIC.”

Applicants (hereinafter “Appellants”) are not aware of any other related appeals or interferences that would affect the Board’s decision on the current appeal.

### **III. STATUS OF CLAIMS**

Claims 37 and 48 are cancelled. Claims 1-36, 38-47, and 49-51 are pending and are the subject of this appeal. Claims 1, 39, and 44 are independent claims. Each of claims 1-36, 38-47, and 49-51 is reproduced in an Appendix to this Appeal Brief.

**IV. STATUS OF AMENDMENTS**

Appellants did not submit, and the Examiner did not enter, any amendments to the application subsequent to final rejection.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

The following is a concise explanation of the subject matter defined in each of the claims involved in the appeal, as required by 37 C.F.R. § 41.37(c)(1)(v). In general, the following explanation is not intended to be used to construe the claims, which are believed to speak for themselves, nor does Appellant intend the following explanation to modify or add any claim elements, or to constitute a disclaimer of any equivalents to which the claims would otherwise be entitled, nor is any discussion of certain preferred embodiments herein intended to disclaim other possible embodiments. References herein to the Specification are intended to be exemplary and not limiting.

### **A. Claim 1**

Claim 1 recites an information distribution system, comprising a sponsor subsystem, said sponsor subsystem including a plurality of listing attributes. For example, with regard to Appellants' Figures 1 and 8a, Figure 8a is a block diagram illustrating one example of a subsystem-level view of the system 100 that includes a user subsystem 310 and a sponsor subsystem 312. (Specification, page 63, lines 29-33.) Further, the sponsor subsystem 312 can configure the ways in which listing attributes 106 are captured and transmitted to the system 100. (Specification, page 64, lines 20-21.)

The system of claim 1 further comprises a plurality of listings, wherein each listing includes at least one listing attribute, wherein said plurality of listings include an enhanced listing. For example, with regard to Appellants' Figure 1, a listing 104 is the mechanism by which a user 130 learns about advertisers 102. (Specification, page 24, lines 20-21.) Further, each listing 104 can possess certain characteristics or attributes which are referred to as listing attributes 106. Listing attributes 106 can be set by the advertiser 102, and they provide the advertiser 102 with the flexibility to target or focus their listing 104 towards users 130 with particular interests. (Specification, page 25, lines 1-5.) Further, listings 104 that are associated with enhanced display fees 163 and the corresponding enhanced display format can be referred to as "enhanced listings." (Specification, page 47, lines 23-24.)

The system of claim 1 further comprises a plurality of format attributes, including a first format attribute and a second format attribute, wherein said first format attribute is associated

with said enhanced listing and wherein said second format attribute is associated with at least one said listing that is not said enhanced listing. For example, in some embodiments of the information system, the system can incorporate the functionality of enhanced display formats. The information system can provide advertisers with the ability to distinguish their information records from the information records of other advertisers through the use of various enhanced display formats. (Specification, page 22, lines 9-13.) Further, with regard to Appellants' Figure 1, as indicated by the bracket extending from the listing 104, each listing 104 can possess certain characteristics or attributes which are referred to as listing attributes 106. Listing attributes 106 can be set by the advertiser 102, and they provide the advertiser 102 with the flexibility to target or focus their listing 104 towards users 130 with particular interests. Although listing attributes 106 can vary widely from listing 104 to listing 104 (even within the context of a single sequence of listings 104 within a single embodiment of the system 100), in many embodiments of the system 100, there are similarities with respect to the particular types of information used by the system 100 as listing attributes 106 to describe listings 104. (Specification, page 25, lines 1-9.)

The system of claim 1 further comprises a user subsystem, said user subsystem including a request, said user subsystem providing for the receipt of said request. For example, Figure 8a is a block diagram illustrating one example of a subsystem-level view of the system 100 that includes a user subsystem 310. (Specification, page 63, lines 29-30; Figure 8a.) Further, a user subsystem 310 can be used by users 130 to submit requests 132 and receive responses 144. The user subsystem 310 includes the user interface 142. The user subsystem 310 is the mechanism by which users 130 interact with the system 100 and the listings 104 submitted by the advertisers 102. The user subsystem 310 can configure the ways in which request attributes 134 are captured and transmitted to the system 100. The user subsystem 310 can include functionality such as user profiles, user history, and the ability to save requests 132. The user subsystem 310 allows the user 130 to focus their efforts at information retrieval. (Specification, page 64, lines 2-10.)

The system of claim 1 further comprises a response, said user subsystem providing for said response. For example, with regard to Appellants' Figures 1 and 8a, a user subsystem 310



can be used by users 130 to submit requests 132 and receive responses 144. The user subsystem 310 includes the user interface 142. The user subsystem 310 is the mechanism by which users 130 interact with the system 100 and the listings 104 submitted by the advertisers 102. The user subsystem 310 can configure the ways in which request attributes 134 are captured and transmitted to the system 100. The user subsystem 310 can include functionality such as user profiles, user history, and the ability to save requests 132. The user subsystem 310 allows the user 130 to focus their efforts at information retrieval. (Specification, page 64, lines 2-10.)

The system of claim 1 further comprises an administrator subsystem, said administrator subsystem including a response heuristic, said response heuristic providing for selectively identifying a subset of said listings to be included in said response, wherein said subset of listings includes said enhanced listing. For example, Figure 8b is a block diagram illustrating one example of a subsystem-level view of the system 100 that includes a user subsystem 310, a sponsor subsystem 312, and an administrator subsystem 314. (Specification, page 64, lines 27-29.) Further, the administrator subsystem 314 is the mechanism by which the administrator 160 interacts with the system 100, providing the mechanism for creating, updating, and deleting of administrative rules 122. (Specification, page 64, lines 30-32.) Further, the response heuristic 172 is the process performed by the system 100 to populate the response 144. (Specification, page 41, lines 18-19.)

The system of claim 1 further comprises a plurality of priority metrics, wherein each listing in said response is associated with at least one said priority metric. For example, with regard to Appellants' Figures 1 and 2, a priority metric 179 can be used by the placement heuristic 174 to identify the desired order of various listings 104. The inputs for the calculation of the priority metric 179 can include virtually any of the listing attributes 106 and request attributes 134 relating to the listing 104. (Specification, page 42, lines 26-29.)

The system of claim 1 further comprises an enhanced display fee, wherein said enhanced display fee is associated with said enhanced listing. For example, with regard to Appellants' Figures 1 and 2, an enhanced display fee 163 can be charged for listings 104 in conjunction with various pre-defined "prominence products" offered by the administrator 160. Prominence products relate to listing attributes that impact how a listing is perceived by users 130.

(Specification, page 47, lines 5-8.) Further, listings 104 that are associated with enhanced display fees 163 and the corresponding enhanced display format can be referred to as “enhanced listings.” (Specification, page 47, lines 23-24.)

The system of claim 1 further comprises a placement heuristic, wherein said placement heuristic provides for arranging said subset of listings within said response, wherein the placement of each said listing is influenced by at least one said priority metric associated with said listing, and wherein the placement of said enhanced listing is not influenced by said enhanced display fee. For example, with regard to Appellants’ Figure 2, as identified by the bracket originating from the response heuristic 172 and encompassing the placement heuristic 174, the placement heuristic 174 is a sub-process that is part of the response heuristic 172. The placement heuristic 174 determines the placement and order of various listings 104. Any of the different attributes processed by the system 100 can be used by the placement heuristic 174 to arrange the display of the response 144. (Specification, page 42, lines 4-9.)

**B. Claim 6**

Claim 6 depends from claim 1. The system of claim 6 further comprises a per-hit fee amount, wherein said enhanced display fee is included as part of said per-hit fee amount associated with said enhanced listing. For example, with regard to Example A at page 74, line 9 of Appellants’ specification, Example A illustrates how the enhanced display fee 163 can add to the per-hit fee amount 113 for a listing 104, while decreasing the value of the per-hit fee amount 113 used to determine the priority metric 179. This is because less of the per-hit fee amount 113 is being allocated for priority metric 179 purposes. (Specification, Example A, page 74, lines 9-14.)

**C. Claim 8**

Claim 8 depends from claim 1. The system of claim 8 further comprises a plurality of responses, including a first response and a second response. For example, the order in which listings are displayed in a particular response to a particular request can be influenced by numerous variables or combinations thereof, including a group affiliation, a geography attribute, a category attribute, a priority metric, a fixed-fee, a per-hit fee, a position adjustment factor, and an enhanced display fee. (Specification, page 21, lines 9-13.) Further, with regard to

Appellants' Figure 1, it is anticipated that millions of different users 130 could submit requests 132 and receive responses 144 using the system 100. (Specification, page 32, lines 5-7.)

The system of claim 8 further comprises a plurality of priority metrics, including a first priority metric and a second priority metric. For example, the popularity of a particular listing can enhance the priority metric for that particular listing so that the priority metric for that particularly listing surpasses the priority metrics associated with listings involving higher per-hit fees. (Specification, page 13, lines 25-28.) Further, with regard to Appellant's Figure 13, the listings 104 associated with the applicable NMetro group 232.001 that possess the highest three priority metrics 179 are listed in order of their perspective priority metrics 179, NMetro1 (104.001), NMetro2 (104.002), and NMetro3 (104.003).

The system of claim 8 further comprises wherein said plurality of listings includes a first listing, wherein said plurality of priority metrics includes a first priority metric and a second priority metric, wherein said first priority metric is associated with said first listing in said first response, and wherein said second priority metric is associated with said first listing in said second response. For example, with regard to Appellants' Figures 1 and 2, a priority metric 179 can be used by the placement heuristic 174 to identify the desired order of various listings 104. (Specification, page 42, lines 26-27.) Further, Figures 13-19 display example listings. (Specification, Figs.13-19.)

#### **D. Claim 16**

Claim 16 depends from claim 1. The system of claim 16 further comprises an advertiser interface, a user interface, and a detailed view, wherein said advertiser interface provides for the creation of said detailed view, and wherein said user interface provides for displaying said detailed view. For example, with regard to Appellants' Figure 1, as indicated by an arrow pointing from the advertiser access device 114 to an advertiser interface 116, and an arrow from the advertiser interface 116 to a server 118, the advertiser interface 116 is the mechanism by which the advertiser 102 (through the advertiser access device 114) interacts with the system 100. (Specification, page 29, lines 2-5.) Further, as indicated by an arrow pointing from the user access device 140 to and from a user interface 142, the arrow pointing from the user interface 142 to the server 118, and the arrow from the response 144 to the user interface 142, the user

interface 142 is the interface by which the user 130 interacts with the system 100. (Specification, page 36, lines 18-21.) Further, with regard to Appellants' Figures 35a and 35b, Figure 35a is a top portion of a screen print illustrating an example of a detailed view 127 of a listing 104. Figure 35b is the bottom portion of the screen print in Figure 35a. Different detailed views 127 within the same response 144 may display different listing attributes 106. The administrative rules 122 can be configured to restrict certain listing attributes 106, while requiring other listing attributes 106. (Specification, page 85, lines 26-31.)

**E. Claim 18**

Claim 18 depends from claim 16, which depends from claim 1. The system of claim 18 further comprises wherein said detailed view of said enhanced listing requires an affirmative invocation through said user interface before being displayed through said user interface. For example, with regard to Appellants' Figure 1, as illustrated by the bracket originating from the listing records 128 and encompassing a variety of detailed views 127 and summary views 129, each listing record 128 may include both a detailed view 127 and a summary view 129. (Specification, page 30, lines 31-33.) Further, also with regard to Appellants' Figure 1, requests 132 are invocations by users 130 to obtain information. The purpose of the system 100 is to respond to requests 132. In some embodiments, requests 132 can be stored by the system 100 in building a profile for various users 130. The policy behind such a practice would be that users 130 are likely to have reoccurring interests that they would prefer the system 100 to maintain. In other embodiments, users 130 can save particular requests 132, but such activities require the affirmative decision of the user 130. (Specification, page 32, lines 10-16.)

**F. Claim 20**

Claim 20 depends from claim 1. The system of claim 20 further comprises wherein each said listing is associated with a per-hit fee, wherein said enhanced display fee for said enhanced listing is included in said per-hit fee associated with said enhanced listing, and wherein said listings displayed by said user subsystem are not displayed in an order that is in accordance with said per-hit fee. For example, some search tools may display provider listings in accordance with a per-hit fee associated with the particular listing. The greater the per-hit fee, the closer to the front of the line the particular listing is displayed. Other search tools may prioritize listings

based on a relevance metric related to the particular search criteria submitted by a user, a date/time stamp associated with the listing, or some other attribute related to the listing. (Specification, page 8, lines 14-20.) Further, with regard to Example A at page 74, line 9 of Appellants' specification, Example A illustrates how the enhanced display fee 163 can add to the per-hit fee amount 113 for a listing 104, while decreasing the value of the per-hit fee amount 113 used to determine the priority metric 179. This is because less of the per-hit fee amount 113 is being allocated for priority metric 179 purposes. (Specification, Example A, page 74, lines 9-14.)

#### **G. Claim 26**

Claim 26 depends from claim 1. The system of claim 26 further comprises a category attribute, wherein said request includes said category attribute and wherein said response is influenced by said category attribute. For example, with regard to Appellants' Figure 1, as indicated by the bracket extending from the listing attributes 106 and encompassing a category attribute 110, one type of characteristic or listing attribute 106 that can be helpful to associate with various listings 104 is a category description of the subject matter offered by the advertisers 102. Such a category description can be referred to as a category attribute 110. One or more category attributes 110 can be used by the system 100 to associate a particular listing 104 with a good, service, or other type of offering (collectively "offering"). In many embodiments of the system 100, category attributes 110 have a hierarchical relationship with each other. For example a digital video camera is a video camera, a camera, and a consumer electronics device all at the same time. (Specification, page 26, lines 2-11.) Further, as an example, category attributes 110 are processed like any other "search term" functioning as a key word by a search engine. (Specification, page 48, lines 14-15.) Further, listings 104 can be either included or excluded from the results on the basis of similarities between the category selection 138 and the category attributes 110 associated with the various listings 104. (Specification, page 50, lines 15-17.)

#### **H. Claim 27**

Claim 27 depends from claim 26, which depends from claim 1. The system of claim 27 further comprises a plurality of category attributes, said plurality of category attributes including

a first category attribute associated with said enhanced listing, wherein said enhanced display fee associated with said enhanced listing is influenced by said category attribute. For example, with regard to Appellants' Figures 1 and 2, listings 104 that are associated with enhanced display fees 163 and the corresponding enhanced display format can be referred to as "enhanced listings." The system 100 can be configured in such a way as to transform a particular listing 104 into an enhanced listing in selective circumstances, typically depending on the type of request 132. For example, the system 100 could be configured to enhance a listing 104 in the case of a nationwide search for consumer electronics stores, but not to enhance the listing 104 in the context of a search for local repair shop for electronic items. The various uses of the enhanced display fee 163 are discussed in greater detail below. (Specification, page 47, lines 23-31.)

**I. Claim 30**

Claim 30 depends from claim 1. The system of claim 30 further comprises a plurality of fee type attributes, wherein each said enhanced listing in said response is associated with at least one said fee type attribute, and wherein said enhanced display fee associated with said enhanced listing is influenced by said fee type attribute. For example, with regard to Appellants' Figure 1, another example of a type attribute 112 is a fixed-fee amount 111. In contrast to a per-hit fee amount 113, listings 104 of the fixed-fee type 111 do not result in advertisers 102 being charged on a per-hit basis. Instead, fixed-fee type listings 104 result in a set subscription charge for a period of time. Moreover, it is further possible to combine aspects of fee amounts 111 and 113 into a single listing 104. For example, a fixed fee amount 111 may include an enhanced display fee 163 based on a per-hit fee amount 113. (Specification, page 27, lines 4-10.)

**J. Claim 32**

Claim 32 depends from claim 1. The system of claim 32 further comprises a per-hit fee, wherein at least one listing in said response is associated with said per-hit fee. For example, with regard to Appellants' Figure 1, fee type attributes 112 relate to financial characteristics of the listing 104 with respect to processing performed by the system 100. For example, some listings 104 can involve charging the advertiser 102 each time a particular listing is presented in a response 144 to a request 132. Such an arrangement can be referred to as a per-hit fee amount 113 where a per-hit payment offered by the advertiser is deducted with each "hit" of the listing.

A per-hit fee amount 113 can also involve a charge that is invoked only if the user 130 actually “clicks” on the listing to obtain more information about listing or activates a link on the listing to communicate with the advertiser 102 through the advertiser’s 102 website, or some other mechanism. The per-hit fee amount 113, sometimes referred to as a “per-click” fee amount, can also be referred to as a bid amount because the financial value of the per-hit fee amount 113 will be used by the system 100 (but never as the sole factor) in calculating a priority metric for the purposes of awarding better listing placement to advertisers 102 that are generally more valued by an administrator of the system 100. The role of “administrator” is discussed in detail below. (Specification, page 26, line 23 - page 27, line 3.)

**K. Claim 33**

Claim 33 depends from claim 32, which depends from claim 1. The system of claim 33 further comprises a variable per-hit fee, wherein said per-hit fee is said variable per-hit fee. For example, a response may include some listings paid for on a fixed fee basis, while also including listings paid for on a fixed or variable per-hit basis. (Specification, page 12, lines 25-27.)

**L. Claim 34**

Claim 34 depends from claim 33, which depends from claim 32, which depends from claim 1. The system of claim 34 further comprises a number of hits and a period of time, wherein said number of hits and said period of time influence said variable per-hit fee. For example, with regard to Example L at page 80, line 1 of Appellants’ specification, the column “Per-hit fee type 1” illustrates the fee paid for a number of hits within a predetermined time represented by the column “Time Frame” that are less than the number illustrated in the column “Hit Threshold”. Once the hit threshold is reached each additional hit within the pre-determined time will be in accordance with the corresponding listing associated with the column “Per-Hit Fee Type 2”. (Specification, page 80, Example L, lines 3-8.)

**M. Claim 39**

Independent claim 39 recites an information distribution system, comprising a depository of information, said depository including a plurality of listings, said plurality of listings including an enhanced listing, said enhanced listing including an enhanced format attribute. For example, with regard to Appellants’ Figure 1, the listings 104 and listing attributes 106 provided to the

system 100 by the advertiser 102 are stored, updated, processed, and accessed in the form of a variety of listing records 128 that reside within the database structure 126. As discussed above, the contents of listing 104 can vary widely, and thus the contents of the listing records 128 can also vary widely. (Specification, page 30, lines 26-30.) Further, listings 104 that are associated with enhanced display fees 163 and the corresponding enhanced display format can be referred to as “enhanced listings.” (Specification, page 47, lines 23-24.)

The system of claim 39 further comprises a server configured to receive a plurality of requests and to generate a plurality of responses. For example, with regard to Appellants’ Figure 1, it is anticipated that millions of different users 130 could submit requests 132 and receive responses 144 using the system 100. (Specification, page 32, lines 5-7.)

The system of claim 39 further comprises wherein each response is generated using at least one request and said depository of information. For example, with regard to Appellants’ Figure 1, as indicated by the arrow originating from the advertiser 130 and pointing to a request 132, users 130 create requests 132 and submit them to the system 100. (Specification, page 32, lines 3-4.) Further, the listings 104 and listing attributes 106 provided to the system 100 by the advertiser 102 are stored, updated, processed, and accessed in the form of a variety of listing records 128 that reside within the database structure 126. (Specification, page 30, lines 26-28.)

The system of claim 39 further comprises wherein at least one listing is excluded from said response on the basis of said request. For example, with regard to Appellants’ Figure 1, listings 104 can be either included or excluded from the results on the basis of similarities between the category selection 138 and the category attributes 110 associated with the various listings 104. (Specification, page 50, lines 15-17.) Further, listings 104 can be either included or excluded from the results on the basis of similarities between the geography selection 136 and the geography attributes 110 associated with the various listings 104. (Specification, page 54, lines 19-21.)

The system of claim 39 further comprises wherein said enhanced listing is associated with an enhanced display fee and is included in at least one said response. For example, with regard to Appellants’ Figures 1 and 2, listings 104 that are associated with enhanced display fees 163 and the corresponding enhanced display format can be referred to as “enhanced listings.”



The system 100 can be configured in such a way as to transform a particular listing 104 into an enhanced listing in selective circumstances, typically depending on the type of request 132. (Specification, page 47, lines 23-27.)

The system of claim 39 further comprises wherein placement of said enhanced listing in said response is not influenced by said enhanced display fee. For example, the growing emphasis on the location and placement of listings affirmatively teaches away from allowing advertisers to pay monies not related to “moving up” the ranking of listings. (Specification, page 10, lines 13-15.)

**N. Claim 42**

Claim 42 depends from claim 41, which depends from claim 39. The system of claim 41 further comprises an advertiser interface, said advertiser interface providing for the selection of at least one said enhanced attribute and at least one said enhanced display fee. For example, with regard to Appellants’ Figure 1, as indicated by an arrow pointing from the advertiser access device 114 to an advertiser interface 116, and an arrow from the advertiser interface 116 to a server 118, the advertiser interface 116 is the mechanism by which the advertiser 102 (through the advertiser access device 114) interacts with the system 100. (Specification, page 29, lines 2-5.) Further, the information system can provide advertisers with the ability to distinguish their information records from the information records of other advertisers through the use of various enhanced display formats. (Specification, page 22, lines 10-13.)

**O. Claim 44**

Independent claim 44 recites a method for transmitting information. Claim 44 further recites receiving advertising information from an advertiser. For example, with regard to Appellants’ Figure 1, an advertiser 102 is any individual or organization that provides a listing 104 of information for inclusion in the system 100. (Specification, page 23, lines 14-15.) Further, with regard to Appellants’ Figure 1, as indicated by the arrow originating from the advertiser 102 and pointing toward the listing 104, advertisers 102 are responsible for providing information that comprises the content of the listings 104 to the system 100. (Specification, page 24, lines 7-9.)

Claim 44 further recites using the advertising information to create a listing associated with the advertiser. For example, with regard to Appellants' Figure 1, an advertiser 102 is any individual or organization that provides a listing 104 of information for inclusion in the system 100. (Specification, page 23, lines 14-15.) Further, with regard to Appellants' Figure 1, as indicated by the arrow originating from the advertiser 102 and pointing toward the listing 104, advertisers 102 are responsible for providing information that comprises the content of the listings 104 to the system 100. (Specification, page 24, lines 7-9.)

Claim 44 further recites allowing the advertiser to enhance the display attributes of the listing in exchange for an enhanced display fee. For example, with regard to Appellants' Figures 1 and 2, an enhanced display fee 163 can be charged for listings 104 in conjunction with various pre-defined "prominence products" offered by the administrator 160. (Specification, page 47, lines 5-7.) Further, listings 104 that are associated with enhanced display fees 163 and the corresponding enhanced display format can be referred to as "enhanced listings." (Specification, page 47, lines 23-24.) Further, with regard to Appellants' Figure 1, the listings 104 and listing attributes 106 provided to the system 100 by the advertiser 102 are stored, updated, processed, and accessed in the form of a variety of listing records 128 that reside within the database structure 126.

Claim 44 further recites displaying the listing with enhanced display attributes on a user interface in response to a request by a user, wherein placement of said listing with enhanced display attributes in said response is not influenced by said enhanced display fee. For example, with regard to Appellants' Figures 1 and 2, listings 104 that are associated with enhanced display fees 163 and the corresponding enhanced display format can be referred to as "enhanced listings." The system 100 can be configured in such a way as to transform a particular listing 104 into an enhanced listing in selective circumstances, typically depending on the type of request 132. (Specification, page 47, lines 23-27.) Further, the growing emphasis on the location and placement of listings affirmatively teaches away from allowing advertisers to pay monies not related to "moving up" the ranking of listings. (Specification, page 10, lines 13-15.)

**P. Claim 45**

Claim 45 depends from claim 44. The method of claim 45 further recites associating each listing with a per-hit fee. For example, some search tools may display provider listings in accordance with a per-hit fee associated with the particular listing. The greater the per-hit fee, the closer to the front of the line the particular listing is displayed. Other search tools may prioritize listings based on a relevance metric related to the particular search criteria submitted by a user, a date/time stamp associated with the listing, or some other attribute related to the listing. (Specification, page 8, lines 14-20.)

**Q. Claim 46**

Claim 46 depends from claim 45, which depends from claim 44. The method of claim 46 further recites wherein the enhanced display fee is part of the per-hit fee. For example, with regard to Example A at page 74, line 9 of Appellants' specification, Example A illustrates how the enhanced display fee 163 can add to the per-hit fee amount 113 for a listing 104, while decreasing the value of the per-hit fee amount 113 used to determine the priority metric 179. This is because less of the per-hit fee amount 113 is being allocated for priority metric 179 purposes. (Specification, Example A, page 74, lines 9-14.)

**R. Claim 50**

Claim 50 depends from claim 45, which depends from claim 44. The method of claim 50 further recites the receiving of multiple requests and the display of multiple responses, wherein the same listing appears in an enhanced display format in one response without appearing in an enhanced display format in another response. For example, listings 104 that are associated with enhanced display fees 163 and the corresponding enhanced display format can be referred to as "enhanced listings." The system 100 can be configured in such a way as to transform a particular listing 104 into an enhanced listing in selective circumstances, typically depending on the type of request 132. For example, the system 100 could be configured to enhance a listing 104 in the case of a nationwide search for consumer electronics stores, but not to enhance the listing 104 in the context of a search for local repair shop for electronic items. (Specification, page 47, lines 23-30.)

**S. Claim 51**

Claim 51 depends from claim 45, which depends from claim 44. The method of claim 51 further recites wherein the listings in the response are not displayed in accordance with a per-hit fee that is associated with each of the listings. For example, some search tools may display provider listings in accordance with a per-hit fee associated with the particular listing. The greater the per-hit fee, the closer to the front of the line the particular listing is displayed. Other search tools may prioritize listings based on a relevance metric related to the particular search criteria submitted by a user, a date/time stamp associated with the listing, or some other attribute related to the listing. (Specification, page 8, lines 14-20.)

**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

1. Claims 1-6, 10, 13-17, 19-24, and 30-32 were rejected under 35 U.S.C. 103(a) as allegedly unpatentable over U.S. Patent No. 6,564,208 to Littlefield et al. ("Littlefield").
2. Claim 8 was rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Littlefield and a newsgroup post by "Helen" dated September 7, 2002, entitled "CWSApps Listing (with download) for My Deja" ("Helen").
3. Claim 18 was rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Littlefield and further in view of Official Notice.
4. Claims 26-29 were rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Littlefield and U.S. Patent Application Publication 2001/0044837 to Talib et al. ("Talib").
5. Claim 34 was rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Littlefield, U.S. Patent Application 2004/0186769 to Mangold et al. ("Mangold"), and the anonymous article, "Intasys Corporation Subsidiaries Mamma.com and Intasys Billing Technologies Comment on 03 Results Discuss Recent Events." ("Intasys.").
6. Claims 39-43 were rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Littlefield in view of Official Notice.
7. Claims 44-47, 49 and 51 were rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Littlefield.
8. Claim 50 was rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Littlefield and Kanell.

## VII. ARGUMENT

### A. The Law: Grounds Of Rejection 1-8 (Claims 1-36, 38-47, And 49-51).

With respect to Section 103 rejections, the Examiner has a burden of stating a prima facie case of obviousness. A prima facie case of obviousness has historically required that:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

MPEP, § 2143 (citing In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

So long as the first requirement for a prima facie case of obviousness is not rigidly applied, requiring the Examiner to show some reason for combining prior art references is consistent with the United States Supreme Court's recent decision in KSR International Co. v. Teleflex, Inc., 127 S.Ct. 1727, 82 USPQ2d 1385 (2007). In KSR, the Supreme Court stated that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." (Id. at 1739, 82 USPQ2d at 1395.) Additionally the court stated that

It can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.

(Id. at 1741, 82 USPQ2d at 1396.) The Court further explained that

What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under §103. One of the ways in which a patent's subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent's claims.

(Id. at 1742, 82 USPQ2d at 1397.) Accordingly, the Court made clear that "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was,

independently, known in the prior art.” (*Id.* at 1731, 82 USPQ2d at 1389.) In summary, KSR plainly does not disturb the well-settled proposition that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); M.P.E.P § 2141.02.

**B. Ground Of Rejection No. 1: Claims 1-6, 10, 13-17, 19-24, And 30-32 Are Patentable Under 35 U.S.C. 103(a) Over Littlefield.**

**1. Littlefield Does Not Teach Or Suggest All Of The Elements Of Claim 1.**

Littlefield fails to teach or suggest numerous elements of Appellants’ claims.

Accordingly, for any one of the independent reasons set forth below, the Examiner’s rejections of Appellants’ claims should be reversed.

**a. “enhanced display fee.”**

Independent claim 1 recites in part that “the placement of said enhanced listing is not influenced by said enhanced display fee.” The Examiner conceded that “Littlefield does not expressly disclose that the placement of the enhanced listing is not influenced by the enhanced display fee.” (Final Office Action, page 3; emphasis in original.) The Examiner then argued that “Littlefield implies that placement of the listings is not influenced by the enhanced display fee” because Littlefield does not affirmatively teach that placement of listings is influenced by an enhanced display fee. (Final Office Action, page 4.) Therefore, according to the Examiner, the requirements of claim 1 that “the placement of said enhanced listing is not influenced by said enhanced display fee” would have been obvious

for at least the stated advantage of reducing the incentive to attempt to obtain higher search rankings by manipulation (or even payment), and the implied advantage of thus displaying the listings most likely to be relevant first, saving users the trouble of searching through a larger number of listings to find something relevant.

(*Id.*) Appellants respectfully submit that the Examiner’s stated reason for one of ordinary skill to have compensated for the acknowledged deficiencies of Littlefield has no support in the prior art of record or elsewhere. There is no teaching or suggestion anywhere for the recited “enhanced

display fee.” Therefore, the Section 103 rejection of claim 1 as obvious over Littlefield alone must be reversed.

In contrast to an “enhanced display fee,” Littlefield merely discloses a “subscription fee for associating non-default items with search result listings.” (Littlefield, col. 4, lines 10-14.) For example, Littlefield discloses that “a company may pay a yearly subscription fee to have a particular graphic, such as a company logo, associated with the home page of the company.” (Littlefield, col.4, lines 25-27.) However, nowhere does Littlefield teach or suggest an “enhanced display fee.” At most Littlefield discloses a “subscription fee,” without regard to “display.”

Moreover, Littlefield touts as a purported advantage of his system “providing webpage owners the ability to compete for the attention of the users of a search engine through the use of non-default content,” thereby reducing “the incentive for those webpage owners to employ artificial means to obtain higher search rankings.” (Littlefield, col. 4, lines 15-19.) However, there is no reason that one of ordinary skill would have thought that disincentivizing “webpage owners to employ artificial means to obtain higher search rankings” suggested that “the placement of said enhanced listing is not influenced by said enhanced display fee.” At most, Littlefield suggests that if webpage owners have the opportunity to purchase enhanced listings, such webpage owners may be less incented to attempt to obtain higher search rankings through “artificial” mechanisms, e.g., presumably mechanisms such as including terms in a webpage thought to be attractive to search engines, etc. However, Littlefield does not thereby in any way teach or suggest “the placement of said enhanced listing is not influenced by said enhanced display fee.” In fact, one could more easily argue that, if webpage owners knew that payment of an enhanced display fee would result in better placement for an enhanced listing, then it might be desirable to offer better placements for enhanced listings in exchange for payment of an enhanced display fee. Thus, Littlefield actually teaches away from “the placement of said enhanced listing is not influenced by said enhanced display fee.”

The Examiner further argued that

Figures 1A and 1B of Littlefield show default and non-default (enhanced) items interspersed, so Littlefield does not envision his system as giving all the high positions to enhanced listings. That



does not prove that enhanced display fees play no part in determining the placement of listings, but does help make it plausible that they would not.

(Final Office Action, page 23.) This argument amounts to an admission by the Examiner that Littlefield does not teach or suggest that “the placement of said enhanced listing is not influenced by said enhanced display fee.” Moreover, the Examiner’s reading of Littlefield is neither reasonable or supported. Littlefield’s disclosure of default and non-default items interspersed is irrelevant to whether the position of those items would have been the same if, for example, all had been default items. Littlefield thus has no bearing on the recitation of claim 1 of “the placement of said enhanced listing is not influenced by said enhanced display fee.”

For at least the foregoing reasons, the present rejection of claim 1, and all claims depending therefrom, should be reversed.

**b. “a plurality of priority metrics.”**

Claim 1 further recites in part “a plurality of priority metrics, wherein each listing in said response is associated with at least one said priority metric.” (Emphasis added.) The Examiner alleged that “at least one priority metric, wherein each listing in a response is associated with at least one priority metric” is disclosed by “([Littlefield,] column 2, lines 6-30; note also column 4, lines 15-20).” (Final Office Action, page 3, Emphasis added.) However, claim 1 recites “a plurality of priority metrics,” not “at least one priority metric,” as stated in the Final Office Action. Therefore, the Examiner’s rejection should be reversed at least because it fails to address accurately the subject matter recited in claim 1. Moreover, as explained in detail below, at most Littlefield discloses a “ranking,” not “a plurality of priority metrics” as recited by Appellants’ claim 1. (Littlefield, col. 2, lines 6-30.)

Littlefield discloses that search engines may provide listings in an order, where “[t]he order usually takes the form of a ‘ranking’, where the document with the highest ranking is the document considered most likely to satisfy the interest reflected in the search criteria specified by the user.” (Littlefield, col. 2, lines 10-14.) Littlefield further discloses that

[b]y providing web page owners the ability to compete for the attention of users of a search engine through the use of non-default content, the incentive for those web page owners to employ artificial means to obtain higher search rankings is reduced.

Consequently, the integrity and accuracy of search engine results may improve.

(Littlefield, col. 4, lines 15-20.) However, in contrast to “a plurality of priority metrics, wherein each listing in said response is associated with at least one said priority metric” as recited by Appellants’ claim 1, Littlefield merely discloses ranking listings according to a single criterion—a user interest. Littlefield further states that “specific techniques for determining that ranking will vary from implementation to implementation, and the present invention is not limited to any particular ranking technique.” (Littlefield, col. 2, lines 15-17.) However, Littlefield fails to teach or suggest any criteria for ranking other than the general idea of user interest, much less does Littlefield teach or suggest “a priority metric.” Thus, Littlefield does not disclose “a plurality of priority metrics,” let alone “a plurality of priority metrics, wherein each listing in said response is associated with at least one said priority metric” as recited by Appellants’ claim 1.

For at least the foregoing reasons, the present rejection of claim 1, and all claims depending therefrom, should be reversed.

**2. Claim 6 Is Separately Patentable.**

Claim 6 depends from claim 1. Thus, claim 6 is patentable at least for the reasons discussed above with regard to claim 1. Moreover, claim 6 further recites “a per-hit fee amount, wherein said enhanced display fee is included as part of said per-hit fee amount associated with said enhanced listing.” The Examiner cited “column 4, lines 10-14” of Littlefield as disclosing the recitations of claim 6. (Final Office Action, page 5.) However, Littlefield in fact teaches away from the foregoing recitation of claim 6.

When discussing claim 20, the Examiner stated that Littlefield teaches not that “said enhanced display fee is included as part of said per-hit fee amount associated with said enhanced listing,” but rather that Littlefield made it obvious to use a distinct per-hit fee amount and enhanced display fee. Specifically, the Examiner stated that:

Littlefield discloses several ways that a search engine may charge advertisers (column 4, lines 1-14), including a per-hit fee (click-through fee) “Instead of or in addition to a subscription fee for associating non-default items [enhancements to listings] with search result listings.” This, at the least, makes it obvious for the per-hit fee to be distinct from the enhancement fee, and, as set forth above, there are advantages and motivations for the listings to

be displayed on some other basis (e.g., apparent relevance to a search query), not a per-hit fee.

(Final Office Action, page 25.) Thus, in contrast to “said enhanced display fee is included as part of said per-hit fee amount associated with said enhanced listing,” the Examiner argued that Littlefield teaches the opposite, that “the enhanced display fee” is distinct from, and thus not included in, “said per-hit fee.” By arguing that Littlefield “makes it obvious for the per-hit fee to be distinct from the enhancement fee,” the Examiner in fact demonstrated that Littlefield teaches away from the recitation of claim 6 of “a per-hit fee amount, wherein said enhanced display fee is included as part of said per-hit fee amount associated with said enhanced listing.” (Emphasis added.) For at least these reasons, claim 6 is separately patentable and the Examiner’s rejection of claim 6 should be reversed.

### **3. Claim 20 Is Separately Patentable.**

Claim 20 depends from claim 1. Thus, claim 20 is patentable at least for the reasons discussed above with regard to claim 1. Moreover, claim 20 further recites:

each said listing is associated with a per-hit fee, wherein said enhanced display fee for said enhanced listing is included in said per-hit fee associated with said enhanced listing, and wherein said listings displayed by said user subsystem are not displayed in an order that is in accordance with said per-hit fee.

Similar to the recitation of claim 6 of “wherein said enhanced display fee is included as part of said per-hit fee amount associated with said enhanced listing,” claim 20 recites “wherein said enhanced display fee for said enhanced listing is included in said per-hit fee associated with said enhanced listing.” Thus, claim 20 is separately patentable for at least the reasons discussed above with regard to claim 6.

Moreover, claim 20 is separately patentable for the further independent reason that Littlefield fails to teach or suggest “said listings displayed by said user subsystem are not displayed in an order that is in accordance with said per-hit fee.” The Examiner rejected claim 20 as allegedly unpatentable over Littlefield alone, but acknowledged that “Littlefield does not expressly disclose that the listings displayed by the user subsystem are not displayed in an order that is in accordance with the per-hit fee.” (Final Office Action, page 7.) The Examiner then argued that it would have been “obvious for the listings displayed by the user subsystem not be

displayed in an order that is in accordance with the per-hit fee” because “Littlefield teaches giving advertisers the ability to compete for attention through enhanced listings, reducing the incentive to attempt to obtain higher search rankings.” (*Id.*, pages 7-8.)

In fact, Appellants respectfully submit that Littlefield’s purported advantage of “giving advertisers the ability to compete for attention through enhanced listings” in reality would have suggested that listings would be displayed in an order in accordance with a per-hit fee, and that an enhanced listing would give an advertisers the opportunity to compete for attention despite low placement based on a per-hit fee. Thus, Littlefield teaches away from the requirements of claim 20 that “said listings displayed by said user subsystem are not displayed in an order that is in accordance with said per-hit fee.” Moreover, Littlefield’s disclosure of click-through fees and the use of “non-default content” to overcome the ordering resulting from use of click-through fees further teaches away from the foregoing recitation of claim 20.

Therefore, the rejections of claim 20 should be reversed.

#### **4. Claim 30 Is Separately Patentable.**

Claim 30 depends from claim 1. Thus, claim 30 is patentable at least for the reasons discussed above with regard to claim 1. Moreover, claim 30 further recites:

a plurality of fee type attributes, wherein each said enhanced listing in said response is associated with at least one said fee type attribute, and wherein said enhanced display fee associated with said enhanced listing is influenced by said fee type attribute.

The Examiner contended that Littlefield by itself reads on claim 30. However, Littlefield simply discloses a subscription fee for an advertiser to be potentially included in search results, where the subscription fee “may be based on a variety of factors, including the size and type of the non-default items that webpage owners desire to associate with the search result listings for their pages.” (Littlefield, column 4, lines 7-9.) Littlefield also discloses “click-through fees” that may be charged “instead of or in addition to a subscription fee for associating non-default items with search result listings.” (*Id.*, column 4, lines 10-12.) However, nowhere does Littlefield teach or suggest that click-through fees may be influenced by Littlefield’s subscription fee, or vice versa. Accordingly, at a minimum, Littlefield does not teach or suggest at least the requirement of claim 30 that “said enhanced display fee associated with said enhanced listing is influenced by

said fee type attribute.” Moreover, Littlefield in fact teaches away from this claim recitation to the extent that Littlefield discloses differences in fees solely based on the attributes of the non-default listing, without influence of the fee type attribute.

For at least the foregoing reasons, claim 30 is separately patentable, and therefore the rejection of claim 30 should be reversed.

**C. Ground Of Rejection No. 2: Claim 8 Is Separately Patentable Under 35 U.S.C. 103(a) Over The Combination Of Littlefield And Helen.**

Claim 8 depends from claim 1. Thus, claim 8 is patentable at least for the reasons discussed above with regard to claim 1. Moreover, claim 8 recites in part:

a plurality of responses, including a first response and a second response . . . wherein said first priority metric is associated with said first listing in said first response, and wherein said second priority metric is associated with said first listing in said second response.

The Examiner asserted that claim 8 was unpatentable over the combination of Littlefield and a newsgroup post by “Helen,” dated September 7, 2002, entitled “CWSApps Listing (with download) for My Deja.” In fact, Helen teaches at most a single response and not “a first response and a second response.” Moreover, Helen teaches against “said first priority metric . . . associated with said first listing in said first response” and “said second priority metric is associated with said first listing in said second response.”

Helen discloses that once “My Deja” returns a set of search results, the “[r]esults can then be sorted by a relevance score, newsgroup, author, subject thread, or date.” However, nowhere does Helen disclose “My Deja” providing more than a single set of search results. Therefore, Helen can in no way teach or suggest the requirement of claim 8 of “a plurality of responses.”

Further, the Examiner appears to have alleged that “relevance score, newsgroup, author, subject thread, or date” as discussed by Helen are all “priority metrics.” (See Office Action, page 13.) However, these purported “priority metrics” all appear within the single set of search results disclosed by Helen. For example, assuming for the moment that “date” and “author” are a first and second priority metric, which they are not, Helen does not teach or suggest that “date” is associated with a listing in a “first response,” and that “author” is associated with a listing in a “second response.” To the contrary, Helen teaches that “date” and “author” are both associated

with a particular listing in a single set of search results. Accordingly, Helen fails to teach or suggest that “said first priority metric is associated with said first listing in said first response, and . . . said second priority metric is associated with said first listing in said second response.” Indeed, Helen teaches against the foregoing recitation of claim 8 because from Helen one would have thought there was no need or reason for “a plurality of responses” or associating different priority metrics with a listing in different responses.

For at least the foregoing reasons, claim 8 is separately patentable, and therefore the rejection of claim 8 should be reversed.

**D. Ground Of Rejection No. 3: Claim 18 Is Separately Patentable Under 35 U.S.C. 103(a) Over The Combination Of Littlefield And Official Notice.**

Claim 18 depends from claim 16, which depends from independent claim 1. Thus, claim 18 is patentable at least for the reasons discussed above with regard to claim 1. Moreover, claim 18 recites in part “wherein said detailed view of said enhanced listing requires an affirmative invocation through said user interface before being displayed through said user interface.” The Examiner took Official Notice that “it is well known to require an affirmative invocation through a user interface before displaying an item such as a graphic, a movie file, etc.” (Final Office Action, page 12.) Appellants respectfully disagree. Although Appellants’ claim specifically recites “an affirmative invocation through said user interface,” this recitation is within the context of “said detailed view of said enhanced listing requires an affirmative invocation through said user interface before being displayed through said user interface.” Littlefield in fact teaches away from the foregoing recitation, by automatically displaying its non-default content without any “affirmative invocation.” (Littlefield, col. 5, lines 12-15.)

Thus, the Examiner’s continued speculation that “it would have been obvious . . . to require such affirmative invocation through the user interface, for at least the obvious advantage of not assaulting the user with detailed views from multiple enhanced listings in his search results” is wholly unsupported by the prior art of record. Indeed, the Examiner’s continued use of unsupported Official Notice on this point only serves to reinforce the fact that none of the prior art references teach or suggest at least, “wherein said detailed view of said enhanced listing requires an affirmative invocation through said user interface before being displayed through

said user interface,” and therefore the rejection of claim 18 should be reversed at least for the foregoing reasons.

**E. Ground Of Rejection No. 4: Claims 26-29 Are Separately Patentable Under 35 U.S.C. 103(a) Over The Combination Of Littlefield And Talib.**

Claim 27 depends from claim 26, which depends from independent claim 1. Thus, claim 27 is patentable at least for the reasons discussed above with regard to claim 1. Moreover, claim 27 recites in part “a plurality of category attributes, said plurality of category attributes including a first category attribute associated with said enhanced listing, wherein said enhanced display fee associated with said enhanced listing is influenced by said category attribute.” The Examiner admitted that “Littlefield does not expressly disclose a category attribute.” (Final Office Action, page 13.) The Examiner then stated that

Talib further teaches a plurality of category attributes, including a first category attribute associated with listings and advertisements (paragraphs 107-111), wherein the fee associated with an advertisement is influenced by the category attribute (paragraph 111). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the plurality of category attributes to include a first category attribute associated with the enhanced listing, and for the enhanced display fee associated with the enhanced listing to be influenced by the category attribute, for the stated advantages that business are willing to pay higher advertising rates to reach users engaged in focused searches, or to have their ads viewed by more people.

In fact, Talib in no way teaches or suggests the recited “said enhanced display fee associated with said enhanced listing is influenced by said category attribute.”

Talib discloses a “multi-taxonomy, multi-category search tool that allows a user to ‘navigate’ through an information directory using any of the taxonomies at any time.” (Talib, paragraph [0028]) Talib further discloses placing listings into categories in a hierarchy, and charging varying amounts for views of the listings, based on which category terms were specified for search by the user. (Talib, paragraphs [0107]-[0111].) However, claim 27 recites not simply use of categories, but actually recites “a plurality of category attributes, said plurality of category attributes including a first category attribute associated with said enhanced listing, wherein said enhanced display fee associated with said enhanced listing is influenced by said

category attribute.” Indeed, although Talib may disclose search categories affecting a fee for placing a listing within that category, Talib clearly fails to teach or suggest categories influencing other fees, let alone “wherein said enhanced display fee associated with said enhanced listing is influenced by said category attribute.”

For at least these reasons the combination to Littlefield and Talib fails to teach or suggest “wherein said enhanced display fee associated with said enhanced listing is influenced by said category attribute.” Thus, for at least the foregoing reasons, claim 27 is separately patentable, and therefore the rejection of claim 27 should be reversed.

**F. Ground Of Rejection No. 5: Claim 34 Is Separately Patentable Under 35 U.S.C. 103(a) Over The Combination Of Littlefield, Mangold, And Intasys.**

Claim 34 depends from claim 33, which depends from claim 32, which depends from independent claim 1. Thus, claim 34 is patentable at least for the reasons discussed above with regard to claim 1. Moreover, claim 34 recites in part, “a number of hits and a period of time, wherein said number of hits and said period of time influence said variable per-hit fee.” The Examiner admitted that “Neither Littlefield nor Mangold discloses a number of hits and period of time, wherein the number of hits and period of time influence the variable per-hit fee.” (Final Office Action, page 16.) The Examiner then stated that

“Intasys” teaches a per-hit fee varying in accordance with a period of time and number of hits (paragraph beginning “Mamma.com’s advertisers’ return on investment”). Hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant’s invention for there to be a number of hits and period of time, wherein the number of hits and period of time influence the variable per-hit fee, for the stated advantage of providing added value in the search result placement industry (by not counting bogus or apparently redundant hits).

(*Id.*) In fact, Intasys does not teach or suggest “a number of hits and a period of time, wherein said number of hits and said period of time influence said variable per-hit fee.”

Intasys discloses that “an advertiser is not charged for multiple click throughs from the same IP address within a 24-hour period.” (Intasys.) Thus, Intasys teaches a system wherein redundant clicks are filtered out, presumably for reasons such as to improve accuracy or to reduce fraud. However, Intasys fails to teach or suggest “wherein the number of hits and period



of time influence the variable per-hit fee.” In contrast to “said variable per-hit fee” as recited in claim 34, the per-hit fee in Intasys remains constant, and is charged only when the system deems the click to be a proper click, per a click filter. Nowhere does Intasys teach or suggest variable fees, much less “a number of hits and a period of time, wherein said number of hits and said period of time influence said variable per-hit fee.” At most, Intasys discloses filtering out charges for certain clicks.

Thus, for at least the foregoing reasons, claim 34 is separately patentable, and therefore the rejection of claim 34 should be reversed.

**G. Ground Of Rejection No. 6: Claims 39-43 Are Patentable Under 35 U.S.C. 103(a) Over The Combination Of Littlefield And Official Notice.**

**1. The Combination Of Littlefield And Official Notice Does Not Teach Or Suggest All Of The Elements Of Claim 39.**

Independent claim 39 recites in part “wherein placement of said enhanced listing in said response is not influenced by said enhanced display fee.” Similarly, independent claim 1 recites in part, “the placement of said enhanced listing is not influenced by said enhanced display fee.” Thus, independent claim 39, as well as all claims depending therefrom, are patentable for at least the reasons discussed above with regard to this recitation of claim 1. Therefore, the rejection of claim 39, as well as all claims depending therefrom, should be reversed. Moreover, there are additional reasons for the patentability of claims 39-43, discussed below.

**2. Claim 42 is Separately Patentable.**

Claim 42 depends from claim 41, which depends from claim 39. Thus, claim 42 is patentable at least for the reasons discussed above with regard to claim 39. Moreover, claim 42 recites in part, “said advertiser interface providing for the selection of at least one said enhanced attribute and at least one said enhanced display fee.” The Examiner alleged that “Littlefield discloses an advertiser interface, the advertiser interface providing for the selection of at least one enhanced attribute (column 4, lines 24-47), and teaches enhanced display fees (column 4, lines 1-9), implying selection of said fees in accordance with the selected enhanced attributes.” (Final Office Action, page 19.) In fact, Littlefield fails to teach or suggest, “said advertiser interface providing for the selection of at least one said enhanced attribute and at least one said enhanced display fee.”

Although Littlefield may disclose a web page for the selection of non-default items (e.g. Littlefield, col. 4, lines 24-27), and that fees may vary based on the non-default items (e.g. id. at col.4, lines 1-9), Littlefield fails to teach or suggest “said advertiser interface providing for the selection of at least one said enhanced attribute and at least one said enhanced display fee,” as recited by Appellants’ claim 42. Littlefield discloses no selection of fees, instead stating that “[t]he amount charged by the search engine controller may vary based on a variety of factors.” (Littlefield, col. 4 lines 6-7.) At most, Littlefield merely discloses that varying fees may be charged. Indeed, Littlefield fails to teach or suggest that a subscriber is even made aware of what the non-default fees may be, let alone that a subscriber may make a selection of “at least one said enhanced display fee.” As a result, Littlefield, clearly fails to teach or suggest “said advertiser interface providing for the selection of at least one said enhanced attribute and at least one said enhanced display fee,” and therefore claim 42 is separately patentable and the rejection of claim 42 should be reversed.

**H. Ground Of Rejection No. 7: Claims 44-47, 49, And 51 Are Patentable Under 35 U.S.C. 103(a) Over Littlefield.**

**1. Littlefield Does Not Teach Or Suggest All Of The Elements Of Claim 44.**

Independent claim 44 recites in part “wherein placement of said listing with enhanced display attributes in said response is not influenced by said enhanced display fee.” Similarly, independent claim 1 recites in part, “the placement of said enhanced listing is not influenced by said enhanced display fee.” Thus, independent claim 44, as well as all claims depending therefrom, are patentable for at least the reasons discussed above with regard to this recitation of claim 1. Therefore, the rejection of claim 44, as well as all claims depending therefrom, should be reversed.

**2. Claim 46 Is Separately Patentable.**

Claim 46 depends from claim 45, which depends from claim 44. Thus, claim 46 is patentable at least for the reasons discussed above with regard to claim 44. Moreover, claim 46 recites in part, “wherein the enhanced display fee is part of the per-hit fee.” The Examiner cited “column 4, lines 15-20” of Littlefield as disclosing these recitations of claim 46. (Final Office Action, page 21.) However, Littlefield fails to teach or suggest “wherein the enhanced display fee is part of the per-hit fee” as recited by claim 46.

In contrast to “wherein the enhanced display fee is part of the per-hit fee” as recited by claim 46, Littlefield discloses two separate fees. First, Littlefield discloses “a subscription fee for associating non-default items with search result listings.” Second Littlefield discloses “click-through fees based on how many times the search engine users actually select a search result listing that is associated with a non-default item.” (Littlefield, col. 4, lines 15-20.) In fact, the cited section of Littlefield in fact teaches away from claim 46’s recitation “wherein the enhanced display fee is part of the per-hit fee,” by Littlefield’s teaching of two separate fees.

Moreover, the Examiner’s argument with regard to the rejection of claim 20 reinforces this view. Indeed, the Examiner stated that Littlefield “makes it obvious for the per-hit fee to be distinct from the enhancement fee.” (Final Office Action, page 25.) Thus, for the further reason of the Examiner’s admission that Littlefield teaches “the per-hit fee to be distinct from the enhancement fee,” Littlefield teaches away from “wherein the enhanced display fee is part of the per-hit fee.”

Therefore, claim 46 is separately patentable, and the rejection of claim 46 should be reversed.

### **3. Claim 51 Is Separately Patentable.**

Claim 51 depends from claim 45, which depends from claim 44. Thus, claim 51 is patentable at least for the reasons discussed above with regard to claim 44. Moreover, claim 51 recites in part, “wherein the listings in the response are not displayed in accordance with a per-hit fee that is associated with each of the listings.” The Examiner stated that:

Littlefield does not expressly disclose that the listings in the response are not displayed in accordance with a per-hit fee that is associated with each of the listings, but Littlefield discloses a per-hit fee for enhanced listings (column 4, lines 9-14) only as an alternative to or supplement to a subscription fee for enhancements, and nowhere discloses a per-hit fee for listings without enhancements. Hence, it would have been obvious for the listings in the response not to be displayed in accordance with a per-hit fee that is associated with each of the listings, as an obvious consequence of there being no such per-hit fee.

(Final Office Action, page 21.) However, just as Littlefield teaches away from “said listings displayed by said user subsystem are not displayed in an order that is in accordance with said

per-hit fee” as recited by claim 20, Littlefield similarly teaches away from “the listings in the response are not displayed in accordance with a per-hit fee that is associated with each of the listings” as recited by claim 51.

As mentioned above, Appellants respectfully submit that Littlefield’s purported advantage of “giving advertisers the ability to compete for attention through enhanced listings” in fact would have suggested that listings would be displayed in an order in accordance with a per-hit fee, and that an enhanced listing would give an advertisers the opportunity to compete for attention despite low placement based on a per-hit fee. Thus, Littlefield teaches away from the requirements of claim 51 that “the listings in the response are not displayed in accordance with a per-hit fee that is associated with each of the listings.” Moreover, Littlefield’s disclosure of click-through fees and the use of “non-default content” to overcome the ordering resulting from use of click-through fees further teaches away from the foregoing recitation of claim 51.

Therefore, claim 51 is separately patentable, and the rejection of claim 51 should be reversed.

**I. Ground Of Rejection No. 8: Claim 50 Is Separately Patentable Under 35 U.S.C. 103(a) Over The Combination Of Littlefield And Kanell.**

Claim 50 depends from claim 45, which depends from claim 44. Thus, claim 50 is patentable at least for the reasons discussed above with regard to claim 44. Moreover, claim 50 recites in part, “the receiving of multiple requests and the display of multiple responses, wherein the same listing appears in an enhanced display format in one response without appearing in an enhanced display format in another response.” The Examiner admitted that “Littlefield does not disclose the receiving of multiple requests and the display of multiple responses, wherein the same listing appears in an enhanced display format in one response without appearing in an enhanced display format in another response,” and cited Kanell as disclosing these recitations of claim 50. (Final Office Action, page 22.) The Examiner stated that:

Such an enhancement would not necessarily appear in multiple categories in the printed Yellow Pages; hence, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time of applicant's invention for the enhancement to appear in only one or some categories in the online Yellow Pages, and therefore for the same listing to appear in an enhanced display format in one response without appearing in an enhanced display

format in another response, as an obvious consequence of advertisers being unwilling to spend extra money for enhanced advertisements in multiple categories, and listing providers seeking to increase revenues by providing different levels of service, with extra payments required for additional enhancements.

(*Id.*, page 22-23.) However, Kanell fails to teach or suggest at least “wherein the same listing appears in an enhanced display format in one response without appearing in an enhanced display format in another response” as recited by claim 50.

Kanell discloses that “[a] business has to pay to be listed in more than one [category], so don’t assume it will be in each place it could logically be listed.” (Kanell) Kanell further discloses that:

BellSouth hopes to do for the online version what it does in the printed Yellow Pages, for which companies can pay for bold-faced listings and large box ads that include more information.

Those advertisements called enhancements, will pay for the service, said BellSouth spokesman Kevin Doyle. “We are convinced we can turn this into a moneymaking business.”

(*Id.*) Indeed, although Kanell discloses categories and enhancements, nowhere does Kanell teach or suggest that “enhancements” do not appear every time, let alone “wherein the same listing appears in an enhanced display format in one response without appearing in an enhanced display format in another response.” Kanell, in contrast, teaches away from the claim recitation by instead teaching that “companies can pay for bold-faced listings and large box ads that include more information,” indicating, if anything, that such “enhancements” would be displayed each time a listing in Kanell is displayed. Indeed, Kanell merely discloses that BellSouth has “hopes” for an online version of its Yellow Pages, without providing any detail on how these “enhancements” may be selectively applied to listings.

Therefore, claim 50 is separately patentable, and the rejection of claim 50 should be reversed.

### **CONCLUSION**

In view of the above analysis, a reversal of the rejections of record is respectfully requested of this Honorable Board. It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013, under Order No. 66703-0015, from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

Dated: February 19, 2008  
(PTO closed on February 18, 2008 for  
Presidents' Day)

Respectfully submitted,

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**APPENDIX A – CLAIMS ON APPEAL**

Pursuant to 37 CFR § 41.37(c)(vii), the following listing provides a copy of the claims involved in the appeal.

1. An information distribution system, comprising:
  - a sponsor subsystem, said sponsor subsystem including:
    - a plurality of listing attributes;
    - a plurality of listings, wherein each listing includes at least one listing attribute, wherein said plurality of listings include an enhanced listing; and
    - a plurality of format attributes, including a first format attribute and a second format attribute, wherein said first format attribute is associated with said enhanced listing and wherein said second format attribute is associated with at least one said listing that is not said enhanced listing;
  - a user subsystem, said user subsystem including:
    - a request, said user subsystem providing for the receipt of said request; and
    - a response, said user subsystem providing for said response; and
  - an administrator subsystem, said administrator subsystem including:
    - a response heuristic, said response heuristic providing for selectively identifying a subset of said listings to be included in said response, wherein said subset of listings includes said enhanced listing;
    - a plurality of priority metrics, wherein each listing in said response is associated with at least one said priority metric;
    - an enhanced display fee, wherein said enhanced display fee is associated with said enhanced listing; and
    - a placement heuristic, wherein said placement heuristic provides for arranging said subset of listings within said response, wherein the placement of each said listing is influenced by at least one said priority metric associated with said listing, and wherein the placement of said enhanced listing is not influenced by said enhanced display fee.

2. The system of claim 1, further comprising an attribute type, wherein said first format attribute and said second format attribute are of said same attribute type.
3. The system of claim 2, wherein said first format attribute and said second format attribute are mutually exclusive.
4. The system of claim 1, further comprising a plurality of attribute types, wherein each said format attribute is associated with at least one attribute type, wherein said plurality of attribute types includes at least two of: a font type; font size; a color; a graphic; an animation clip; a sound; a number of characters; a number of words; a number of sentences; an interactivity opportunity; and a detailed view.
5. The system of claim 1, further comprising a plurality of enhanced display fees, wherein said enhanced listing is associated with more than one of said enhanced display fees.
6. The system of claim 1, further comprising a per-hit fee amount, wherein said enhanced display fee is included as part of said per-hit fee amount associated with said enhanced listing.
7. The system of claim 1, further comprising a per-hit fee amount, wherein said enhanced display fee is not included as part of said per-hit fee amount associated with said enhanced listing.
8. The system of claim 1, further comprising:
  - a plurality of responses, including a first response and a second response;
  - a plurality of priority metrics, including a first priority metric and a second priority metric;
  - wherein said plurality of listings includes a first listing, wherein said plurality of priority metrics includes a first priority metric and a second priority metric, wherein said first priority



metric is associated with said first listing in said first response, and wherein said second priority metric is associated with said first listing in said second response.

9. The system of claim 1, further comprising:

a plurality of responses, including a first response and a second response;

wherein said plurality of listings includes a first listing, wherein said first listing is said enhanced listing in said first response, wherein said first listing is included in said second response, and wherein said first listing is not said enhanced listing in said second response.

10. The system of claim 1, further comprising:

a plurality of responses, including a first response and a second response;

wherein said plurality of listings includes a first listing, wherein said first listing is said enhanced listing in said first response, and wherein said first listing is not included in said second response.

11. The system of claim 1, further comprising a plurality of enhanced listings and a plurality of groups included in said response, said enhanced listings including a first enhanced listing and a second enhanced listing, said plurality of groups including a first group and a second group, wherein each said listing and each said enhanced listing is associated with at least one said group, and wherein said first enhanced listing belongs to said first group and wherein said second enhanced listing belongs to said second group.

12. The system of claim 11, wherein the placement of said listings by said placement heuristic is influenced by the said groups affiliated with said listings in said response.

13. The system of claim 1, further comprising a plurality of enhanced listings and a plurality of fee types, said enhanced listings including a first enhanced listing and a second enhanced listing, said plurality of fee types including a first fee type and a second fee type, wherein said

first enhanced listing is of said first fee type and wherein said second enhanced listing is of said second fee type.

14. The system of claim 13, wherein each enhanced listing is associated with an enhanced display fee, and wherein the arrangement of said listings and said enhanced listings by said placement heuristic is not influenced by said enhanced display fee.

15. The system of claim 1, said sponsor subsystem further including an advertiser interface, wherein said advertiser interface provides for creating said enhanced listing using at least one said listing.

16. The system of claim 1, further comprising an advertiser interface, a user interface, and a detailed view, wherein said advertiser interface provides for the creation of said detailed view, and wherein said user interface provides for displaying said detailed view.

17. The system of claim 16, wherein said detailed view is associated with said enhanced listing.

18. The system of claim 16, wherein said detailed view of said enhanced listing requires an affirmative invocation through said user interface before being displayed through said user interface.

19. The system of claim 16, wherein said detailed view is associated with said enhanced listing, and said enhanced display fee.

20. The system of claim 1, wherein each said listing is associated with a per-hit fee, wherein said enhanced display fee for said enhanced listing is included in said per-hit fee associated with said enhanced listing, and wherein said listings displayed by said user subsystem are not displayed in an order that is in accordance with said per-hit fee.

21. The system of claim 1, wherein said enhanced listing is no larger than any of the listings in said response.

22. The system of claim 1, further comprising:

a plurality of enhanced listings, including a first enhanced listing and a second enhanced listing; and

a plurality of enhanced attribute types, said plurality of enhanced attribute types including a first enhanced attribute type and a second enhanced attribute type, wherein said first enhanced listing includes said first enhanced attribute type, and wherein said second enhanced listing includes said second enhanced attribute type.

23. The system of claim 22, further comprising a plurality of enhanced display fees, said plurality of enhanced display fees including a first enhanced display fee and a second enhanced display fee, wherein said first enhanced display fee is not equal to said second enhanced display fee, wherein said first enhanced listing is charged said first enhanced display fee, and wherein said second enhanced listing is charged said second enhanced display fee.

24. The system of claim 22, said plurality of enhanced listings further including a third enhanced listing, said third enhanced listing including said first enhanced attribute type and said second enhanced attribute type.

25. The system of claim 24, further comprising a plurality of enhanced display fees, said plurality of enhanced display fees including a first enhanced display fee, and a second enhanced display fee, wherein said first enhanced display fee is not equal to said second enhanced display fee, wherein said first enhanced listing is charged said first enhanced display fee, wherein said second enhanced listing is charged said second enhanced display fee, and wherein said third enhanced listing is charged said first enhanced display fee and said second enhanced display fee.

26. The system of claim 1, further comprising a category attribute, wherein said request includes said category attribute and wherein said response is influenced by said category attribute.

27. The system of claim 26, further comprising a plurality of category attributes, said plurality of category attributes including a first category attribute associated with said enhanced listing, wherein said enhanced display fee associated with said enhanced listing is influenced by said category attribute.

28. The system of claim 1, further comprising a geography attribute, wherein said request includes said geography attribute and wherein said response is influenced by said geography attribute.

29. The system of claim 28, further comprising a plurality of geography attributes, said plurality of geography attributes including a first geography attribute associated with said enhanced listing, wherein said enhanced display fee associated with said enhanced listing is influenced by said geography attribute.

30. The system of claim 1, further comprising a plurality of fee type attributes, wherein each said enhanced listing in said response is associated with at least one said fee type attribute, and wherein said enhanced display fee associated with said enhanced listing is influenced by said fee type attribute.

31. The system of claim 1, further comprising a plurality of web pages, wherein said response includes more than one said web page.

32. The system of claim 1, further comprising a per-hit fee, wherein at least one listing in said response is associated with said per-hit fee.

33. The system of claim 32, further comprising a variable per-hit fee, wherein said per-hit fee is said variable per-hit fee.

34. The system of claim 33, further comprising a number of hits and a period of time, wherein said number of hits and said period of time influence said variable per-hit fee.

35. The system of claim 1, further comprising a plurality of per-hit fee types and a plurality of hit types, wherein each hit type in said plurality of hit types corresponds to at least one per-hit fee type from said plurality of per-hit fee types.

36. The system of claim 35, wherein said plurality of listings includes a first listing, wherein said first listing is associated with more than one said per-hit fee type.

38. The system of claim 1, further comprising a category selection, wherein said request also includes said category selection.

39. An information distribution system, comprising:  
a depository of information, said depository including a plurality of listings, said plurality of listings including an enhanced listing, said enhanced listing including an enhanced format attribute;

a server configured to receive a plurality of requests and to generate a plurality of responses, wherein each response is generated using at least one request and said depository of information, wherein at least one listing is excluded from said response on the basis of said request, wherein said enhanced listing is associated with an enhanced display fee and is included in at least one said response, and wherein placement of said enhanced listing in said response is not influenced by said enhanced display fee.

40. The system of claim 39, further comprising an advertiser interface, wherein said advertiser interface provides for receiving at least one said listing.

41. The system of claim 39, further comprising a plurality of enhanced attributes and a plurality of enhanced display fees, wherein each enhanced attribute is associated with at least one enhanced display fee.

42. The system of claim 41, further comprising an advertiser interface, said advertiser interface providing for the selection of at least one said enhanced attribute and at least one said enhanced display fee.

43. The system of claim 39, further comprising a plurality of enhanced attributes, said plurality of enhanced attributes including at least three of: a font type; font size; a color; a graphic; an animation clip; a sound; a number of characters; a number of words; a number of sentences; an interactivity opportunity; and a detailed view.

44. A method for transmitting information, comprising:  
receiving advertising information from an advertiser;  
using the advertising information to create a listing associated with the advertiser;  
allowing the advertiser to enhance the display attributes of the listing in exchange for an enhanced display fee; and  
displaying the listing with enhanced display attributes on a user interface in response to a request by a user, wherein placement of said listing with enhanced display attributes in said response is not influenced by said enhanced display fee.

45. The method of claim 44, further comprising associating each listing with a per-hit fee.

46. The method of claim 45, wherein the enhanced display fee is part of the per-hit fee.

47. The method of claim 45, further comprising displaying a plurality of listings in the response and ordering the listings in accordance with a priority metric associated with each of the listings in the response.

49. The method of claim 45, wherein the enhanced display attributes include at least two of: a font type; font size; a color; a graphic; an animation clip; a sound; a number of characters; a number of words; a number of sentences; an interactivity opportunity; and a detailed view.

50. The method of claim 45, further comprising the receiving of multiple requests and the display of multiple responses, wherein the same listing appears in an enhanced display format in one response without appearing in an enhanced display format in another response.

51. The method of claim 45, wherein the listings in the response are not displayed in accordance with a per-hit fee that is associated with each of the listings.

**APPENDIX B – EVIDENCE APPENDIX**

In this Appeal, Appellants do not rely on any evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132, or on any other evidence entered by the Examiner.



**APPENDIX C - RELATED PROCEEDINGS APPENDIX**

Not applicable – no decisions have been rendered by the Board of Patent Appeals and Interferences in any of related proceedings identified above.